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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92052927
Party	Plaintiff Mr. Joseph E. Newgarden III
Correspondence Address	THOMAS J. MOTZNY KING & BALLOW 315 UNION STREET, SUITE 1100 NASHVILLE, TN 37201 UNITED STATES dlb@dlbentleylawgp.com
Submission	Other Motions/Papers
Filer's Name	Thomas J. Motzny
Filer's e-mail	trademark@kingballow.com
Signature	/Thomas J. Motzny/
Date	01/24/2012
Attachments	index of exhibits (1).pdf (28 pages)(1595444 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

JOSEPH E. NEWGARDEN III,)	
Petitioner,)	
)	Cancellation No. 92052927
)	
v.)	Mark: TOMORROW
)	Registration No. 3,731,690
)	
KENT G. ANDERSON,)	
Respondent)	
)	

Index of Exhibits

Exhibit A: A true and correct copy of Petitioner's First Set of Interrogatories, Document Requests And Requests To Admit To Respondent.

Exhibit B: A true and correct copy of Respondent's "Applicant's [sic] Answer to Opposer's First Set of Interrogatories."

Exhibit C: A true and correct copy of Respondent's "Applicant's [sic] Response to Opposer's First Request for the Production of Documents."

Exhibit D: A true and correct copy of Respondent's Answer to Petitioner's First Requests for Admission.

Exhibit E: A true and correct copy of the specimens filed by Respondent in the prosecution of Registration No. 3,731,690.

Exhibit F: A true and correct copy of the documents produced by Respondent as "Exhibit 1."

Exhibit G: A true and correct copy of the documents produced by Respondent as "Exhibit 2."

Exhibit H: A true and correct current of the Office Action issued on March 5, 2010 refusing registration to Petition based on Registration No. 3,731,690.

Exhibit I: A true and correct copy of TESS search results for “Kent G. Anderson” as owner.

Exhibit A

Newgarden v. Anderson
Cancellation No. 92052927

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

JOSEPH E. NEWGARDEN III,
Petitioner,

v.

KENT G. ANDERSON,
Respondent

)
)
) Cancellation No. 92052927
)
) Mark: TOMORROW
) Registration No. 3,731,690
)
)
)

**PETITIONER'S FIRST SET OF INTEROGATORIES, DOCUMENT REQUESTS AND
REQUESTS TO ADMIT TO RESPONDENT**

PLEASE TAKE NOTICE Petitioner Joseph E. Newgarden III, by and through its attorneys, pursuant to Rules 33 and 36 of the Federal Rules of Civil Procedure, requests Respondent Kent G. Anderson to answer separately, fully in writing, and under oath the following Interrogatories and Requests for Admission and serve a copy of said answers upon counsel for Plaintiff within thirty (30) days of service of these Interrogatories and Requests for Admission, subject to all pertinent objections to admissibility that may be interposed at trial.

PLEASE TAKE FURTHER NOTICE that, pursuant to Rule 34 of the Federal Rules of Civil Procedure, Petitioner requests that, by no later than thirty (30) days after service of these Requests for Production of Documents, Kent G. Anderson produce the documents specified below for inspection and copying at the offices of KING & BALLOW, 315 Union Street, Suite 1100, Nashville, Tennessee 37201 and, to the extent necessary, continuing each day thereafter.

I. Definitions

1. The terms "Anderson," "you," and "your" refer to Respondent Kent G. Anderson and include any persons controlled by or acting on behalf of that entity, including

but not limited to all officers, directors, owners, employees, agents, representatives, and attorneys, and any predecessors, subsidiaries, parent companies, affiliated companies, joint venturers and/or licensees.

2. The term "Mark" means any word, name, symbol or device or other designation of origin incorporating the word TOMORROW or its phonetic equivalent, in which you claim rights, including any trademark, service mark, or Internet domain name, or any trademark or service mark application or registration.

3. The term "'690 Registration" means United States registered trademark number 3,731,690 for TOMORROW filed on March 17, 2003 and registered on December 29, 2010 and all goods and services identified therein.

4. The term "person" means any natural person or any business, legal or governmental entity, or association.

5. The term "document" as used herein is synonymous in meaning and equal in scope to the usage of this term in Federal Rule of Civil Procedure 34, any "writings and recording" and "photographs" as defined by Federal Rule of Evidence 1001, and its interpretation by the courts, and includes, without limitation, all originals, drafts, and non-identical copies of any written, printed, typed, recorded, electronic, magnetic, optical, punched, copied, graphic or other tangible thing in, upon or from which information may be conveyed, embodied, translated, or stored (including, but not limited to, papers, records, books, correspondence, contracts, minutes of meetings, memoranda, notes or desk calendars and appointment books, intra-office communications, canceled checks, invoices, telegrams, telexes, dictation or other audio tapes, video tapes, studies, electronic mail, information stored in computer readable form, on a compact disc, or any other type of data storage device or medium,

computer printouts, microfilm, microfiche, laser disks, diaries, calendars, photographs, charts, viewgraphs, drawings, sketches and all other writings or drafts thereof), as well as all other tangible things subject to production under Federal Rule of Civil Procedure 34.

6. The term “identify,” when referring to:

- a. a natural person, means to give his or her full name, present or last known address and telephone number, last known place of employment and job title;
- b. a public or private corporation, partnership, association, agency or other entity, means to give its present or last known address and telephone number, and state of incorporation, if applicable;
- c. a document, means to state its general character, title, date, addressee or recipient, author or signatory, present location, and who has possession, custody or control of the document; a product, means to provide a description of the item which is offered for sale, and the intended customer groups, channels of trade, approximate price, and market for the product; a service, means to describe the service and the intended customer groups, channels of trade, approximate price, and market for the service.

7. The term “communication” is defined as any transmission or exchange of information between two (2) or more persons, orally or in writing, and includes, without limitation, any conversation or discussion, whether face-to-face or by means of telephone, letter, facsimile, electronic, digital or other media.

8. The terms “relating to” and “related to” mean concerning, containing,

evidencing, describing, constituting, referring to, explaining, discussing or reflecting.

9. The connectives “and” and “or” and the term “and/or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the request all documents that might otherwise be construed to be outside its scope.

10. The use of a present tense shall include past tenses.

11. The use of the singular form of any word also includes the plural and vice versa.

12. The terms “all” and “each” shall each be construed to include the other.

II. Instructions

1. If you contend that you are entitled to refuse to answer any of these Interrogatories, or any part of these Interrogatories, state the exact legal basis upon which you contend that you are entitled to refuse to answer the Interrogatory or part thereof.

2. If you contend that you are entitled to withhold from production any or all of the documents requested on any ground, identify the nature of the document (*e.g.*, letter or memorandum), the date of the document, the author of the document, and the person to whom the document was addressed; identify each individual who has seen the document, each individual who has received a copy of the document and from whom the individual received the copy, and state the basis upon which you contend that you are entitled to withhold the document from production.

3. Unless otherwise indicated, the time limits for each and every interrogatory and document request included herein are from 2002 to the present.

4. If you are unable to answer an interrogatory fully, submit as much information as is available and explain why your answer is incomplete. If precise information cannot be supplied, submit:

(A) your best estimate or judgment, so identified, and the source or basis of the estimate or judgment; or

(B) such information available to you as comes closest to providing the information requested.

If incomplete answers, estimates, or judgments are submitted and you have reason to believe that other sources of more complete and accurate information exist, identify those other sources of information.

5. Organize and label your responsive documents so that they correspond with the relevant Document Request or Document Requests to which the documents respond.

III. INTERROGATORIES

1. State the date on which the Mark was first created or developed and identify each person who participated in the creation and/or development.

2. For each of the goods and services identified in the '690 Registration individually, state the date, time, place and manner your first use of the Mark occurred.

3. Identify the addresses of every place of business or location you own or lease in connection providing the goods or services displaying the Mark.

4. State all professional business licenses and/or certifications you hold.

5. Identify the names and address of all licensees of the Mark or the '690 Registration.

6. Identify all advertisements and marketing engaged in by you bearing the Mark for each of the goods and services identified in the '690 Registration individually.

7. State the gross revenue received and expenses incurred by you in connection with goods and services bearing the Mark for each year you have used the Mark.

8. Identify all individuals, banks, lending institutions and/or financial institutions from whom you have obtained any financing in connection any of the goods or services identified in the '690 Registration.

9. Identify the date, location of and participants in all "horse and yacht races" held by you or your licensees featuring the Mark.

10. Identify the date, location of and participants in all "sports car races" held by you or your licensees featuring the Mark.

11. Identify all parties for which you provided "hotel management for others" under the Mark.

12. Identify the date, location of and participants in all "entertainment services in the nature of racing car events" held by you or your licensees featuring the Mark.

13. Identify the date, location of and participants in all "entertainment in the nature of automobile races by automobile racing team" held by you or your licensees featuring the Mark.

14. Identify all uses made by you of the Mark in connection with "providing facilities for exhibitions, car races, athletic games and entertainment events."

15. Identify all uses made by you of the Mark in connection with "arena services namely providing facilities for sports concerts, conventions, and exhibitions."

16. Identify all uses made by you of the Mark in connection with "entertainment services namely, the production of operas and television shows."

17. Identify all uses made by you of the Mark in connection with "education and entertainment services in nature of professional football games" including the date, location of and participants in those events.

18. Identify all uses made by you of the Mark in connection with “wholesale distributorships in the field of consumer electronic products, industrial and home robots, prefabricated buildings, automotive parts, aircraft, communications equipment, food, beverages, toys, sporting goods, cosmetics, small appliances, boats, furniture, jewelry, gifts, clothing, computers.”

19. Identify all uses made by you of the Mark in connection with “dealerships in the field of automobiles, water craft, land craft, space craft, air craft, recreational vehicles” including the location of each dealership and the brands of merchandise sold at each dealership.

20. Identify all uses made by you of the Mark in connection with “discount stores in the field of consumer electronic products, home robots, automotive parts, seasonal-themed products, office supplies, bedding and linens, food, beverages, toys, sporting goods, cosmetics, small appliances, boats, furniture, jewelry, gifts, clothing, computers” including the location of each store and the brands of merchandise sold at each dealership.

21. Identify all online locations and URLs associated with your “promoting the goods and services of others by means of operating an on-line shopping mall with links to the retail web sites of others” in connection with the Mark.

22. Identify the date of and participants in events at which you provided “entertainment services, namely, musical and dance performances provided during intervals at sports events” in connection with the Mark.

23. Identify all uses made by you of the Mark in connection with “educational services namely conducting programs in the field of different subject matters, namely, mathematics, science, history, social sciences, physical sciences, enrichment, legal studies, creative writing, foreign languages, food preparation, law enforcement, commercial art, product

design research and development, automotive repair, business subjects; educational testing; educational services, namely colleges, universities, and trade schools.”

24. Identify the date, location of and participants in all “entertainment's [sic] in nature of sports games, namely, track and field, baseball, football, ice hockey, field hockey, soccer, horseshoes, quoits.”

25. Identify all uses made by you of the Mark in connection with “promoting that goods and services of others by arranging for sponsors to affiliate their goods and services with track and field, baseball, football, ice hockey, field hockey, automotive and watercraft racing, soccer events, and air shows.”

26. Identify all uses made by you of the Mark in connection with “music publishing services,” including the names of musical compositions owned or administered by you.

27. Identify all uses made by you of the Mark in connection with “recording studio services.”

28. Identify the names and address of all people employed by you in connection with providing goods and services associated with the Mark.

29. Identify all people who have knowledge or information about your use of the Mark on the goods and services identified in the ‘690 Registration.

30. Identify all brands and/trademark registrations owned and/or controlled by you.

OATH AND VERIFICATION

STATE OF _____)

COUNTY OF _____)

Kent G. Anderson, after having been duly sworn, verifies that he is a Respondent in this action and that the foregoing responses to Petitioner's First Set of Interrogatories to Respondent are true and correct to the best of his knowledge, information, and belief.

Kent G. Anderson

Sworn to and subscribed before me on this ____ day of ____, 2011.

NOTARY PUBLIC

My Commission expires: _____

IV. REQUESTS FOR PRODUCTION OF DOCUMENTS, ELECTRONICALLY STORED INFORMATION, AND TANGIBLE ITEMS

1. Produce all documents which evidence use in commerce prior to April 7, 2008 for each good and service identified in the '690 Registration.
2. Produce all documents which evidence your current use of each good and service identified in the '690 Registration.
3. Produce all documents referring or relating to any communications you have had with any third party regarding the '690 Registration or goods or services associated with the '690 registration.
4. Produce all documents that refer or relate to preparations you made to use the Mark in commerce.
5. Produce all documents which show advertising or marketing each of the goods and services associated with the '690 Registration, including print advertisements, catalogs, flyers displaying the Mark, brochures, television, radio, internet or other media materials.
6. Produce all documents evidencing the geographic areas in which the Mark has been used.
7. Produce documents sufficient to determine all channels of trade goods bearing the Mark travel in, including but not limited to documents related to any locations, websites, or the like through which the goods and services listed in the '690 Registration have been offered for sale or promoted.
8. Produce documents sufficient to identify all customers who have purchased or used your goods or services.

9. Produce all purchase orders, invoices, bills of sale, customs receipts and/or bills of lading for goods and services bearing the Mark.

10. Produce all financial documents showing your gross revenue received and expense incurred in connection with goods or services bearing the Mark.

11. Produce all documents relating to your past and represent efforts to promote or expand public awareness of the Mark.

12. Produce all documents relating to any license agreements or consents to use that you have granted third parties to use the Mark and/or the '690 Registration.

13. Produce all documents which refer or reflect your correspondence with the U.S. Patent and Trademark Office during the prosecution of the '690 Registration, including, but not limited to the file history of United States Trademark Serial Number 76/497,832.

14. Produce all documents referred to by you in answering the accompanying Interrogatories.

15. For any of the accompanying Requests to Admit for which the answer is not an unqualified admission, produce all documents which support your denial.

V. REQUESTS FOR ADMISSION

1. Admit you were not using the Mark in commerce on all the goods and services identified in the '690 Registration at the time you filed a Statement of Use for the '690 Registration.

2. Admit you do not conduct currently use the Mark on all of the goods and services identified in the '690 Registration.

3. Admit you have discontinued use of the Mark on all of the goods and services listed in the '690 Registration and that you do not intend to resume use.

4. Admit the specimens filed during the prosecution of the '690 Registration are not genuine depictions of the Mark as used in commerce.

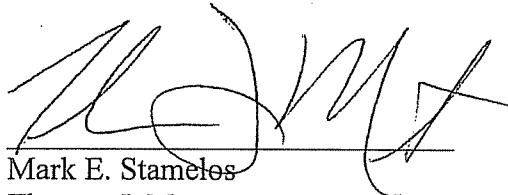
5. Admit that you have never used the Mark in interstate commerce in connection with "entertainment in nature of automobile races."

6. Admit that you have never used the Mark in interstate commerce in connection with "horse and yacht races"

7. Admit that you have never used the Mark in interstate commerce in connection with "entertainment services namely participation in sporting events in the nature of sports car races."

8. Admit that you have never used the Mark in connection with "promoting [the] goods and services of others by arranging for sponsors to affiliate their goods and services with track and field, baseball, football, ice hockey, field hockey, automotive and watercraft racing, soccer events, and air shows."

Dated: December 29, 2010.



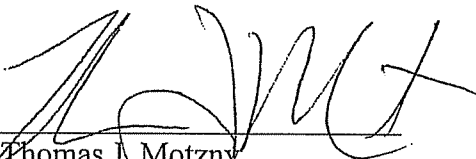
Mark E. Stamelos
Thomas J. Motzny
KING & BALLOW
1100 Union Street Plaza
315 Union Street
Nashville, Tennessee 37201
(615) 259-3456
Attorneys for Petitioner

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document was sent via first class U.S. mail to:

Dwayne L. Bentley, Esq.
DL BENTLEY LAW GROUP PLLC
16 Court Street, Suite 2007
Brooklyn, NY 11241

This 29th day of December, 2010



Thomas J. Motzny

Exhibit B

Newgarden v. Anderson
Cancellation No. 92052927

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

JOSEPH E. NEWGARDEN III,
Petitioner,

Opposition No. 92052927

vs.

Mark: TOMORROW

Kent G. Anderson,
Respondent.

Registration NO.:3731690

Applicant's Answer to Opposer's First Set of Interrogatories

1. 1998.
2. 1998 Applicant first use of the mark was at www.geocities.com
3. The only business location in connection with providing the goods and services is 925 N. Griffin St., Bismark, ND.
4. The Applicant only has a Security Guard license.
5. None.
6. Applicant advertised the mark on the website www.futurevisionaries.com.
7. No revenue received.
8. Applicant has only received funding from family in connection with the goods and services identified in the '690 Registration.
- 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20. There were no participants but the Applicants tried to obtain licenses and/or business partners but was unable to do so.
21. The online location and URL is www.futurevisionaries.com.
- 22., 23, 24, 25, 26 and 27. There were no participants but the Applicants tried to obtain licenses and/or business partners but was unable to do so.

28. There was no employed by the Applicant.

29. The people identified in the request for license letters included with the Production of Document exhibits.

30. Applicants have the following trademarks:

Mark	Registration Number
Future and Design	3002181
Future	2845269
E Birth	2860523
Future Country Future Nation	2780176, 3184164,33650112
Futuristic	2780176, 3184164,33650112
Future Visionairie	3629172
Future Tower	3171797,3181164,3760112

OATH AND VERIFICATION

STATE OF North Dakota

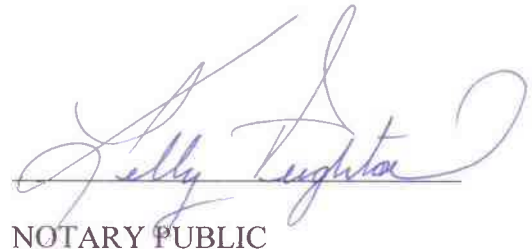
COUNTY OF Burleigh

Kent G. Anderson, after having been duly sworn, verifies that he is a Respondent in this action and that the foregoing responses to Petitioner's First Set of Interrogatories to Respondent are true and correct to the best of his knowledge, information, and belief.



Kent G. Anderson

Sworn to and subscribed before me on this 22 day of February, 2011.


NOTARY PUBLIC

My Commission expires: _____

Exhibit C

Newgarden v. Anderson
Cancellation No. 92052927

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

JOSEPH E. NEWGARDEN III,
Petitioner,

vs.

Kent G. Anderson,
Respondent.

Opposition No. 92052927

Mark: TOMORROW

Registration NO.:3731690

Applicant's Response to Opposer's First Request for Production of Documents

In Answer to the Petitioner's Request for Production of Documents:

1. and 2. At this time the Respondent has tried to license the mark "TOMORROW" as shown in Exhibit 1 as well as the domain names for the tomorrow and the website www.futurevisionaires.com.
3. At this time the Respondent is in communication with a third party about the "TOMORROW" mark as shown in Exhibit 2.
- 4, 5, 6 and 7. The Respondents have made preparations to use the mark in commerce as shown in Exhibit 1.
8. There are no customers that have used the Respondent's goods and services.
9. Respondents didn't receive any purchase orders, invoices, bills of sale, custom receipts and/or bills of lading for goods and services bearing the Mark.
10. Respondents doesn't have any gross revenue so there are no financial documents.
11. These documents are shown in Exhibit 1.
12. There are no licensing agreements to use the 690' Registration.

13. Respondents have included the prosecution of the '690 Registration documents in Exhibit 3.

14. No documents relating to the Interrogatories need to be produced at this time.

15. No documents need to be provided at this time.

Dated: March 3, 2011

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Dwayne L. Bentley". The signature is fluid and cursive, with the first name "Dwayne" being more prominent.

Dwayne L. Bentley
DL BENTLEY LAW GROUP PLLC
Attorney for Applicant, Kent Anderson
16 Court Street, Suite 2007
Brooklyn, NY 11241
Phone: (718)797-5350
Fax: (718) 852-3309

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing APPLICANT'S ANSWER TO OPPOSER'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS was served on the Petitioner this 3rd day of March 2011 via electronic mail to:


Dwayne L. Bentley

Thomas Motzny
KING & BALLOW
315 Union Street, Suite 1100
Nashville, TN 37201

Exhibit D

Newgarden v. Anderson
Cancellation No. 92052927

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

JOSEPH E. NEWGARDEN III,
Petitioner,

Opposition No. 92052927

vs.

Mark: TOMORROW

Kent G. Anderson,
Respondent.

Registration NO.:3731690

Respondent's Answer to Petitioner's First Requests for Admissions

In Answer to the Petitioner's First Request for Admissions

1. Respondent was trying to license the mark for the '690 Registration at the time the Statement of Use was filed.
2. Respondent is trying to license the mark for the '690 Registration.
3. Respondent is still using the mark for the '690 Registration and trying to license it to possible business partners, such as companies or countries..
4. The specimens submitted by Respondent during the prosecution of the '690 Registration are depictions of the Mark as the Respondent tried to license the mark.
5. The Respondent has tried to license the mark in connection with “entertainment in nature of automobile races” but the Respondent has been unable to license use of this mark.
6. The Respondent has tried to license the mark in connection with “horse and yacht races” but the Respondent has been unable to license use of this mark.
7. The Respondent has tried to license the mark in connection with “entertainment services namely participation in sporting events in the nature of sports car races” but the Respondent has been unable to license use of this mark.

8. The Respondent has tried to license the mark in connection with “promoting [the] goods and services of others by arranging for sponsors to affiliate their goods and services with track and field, baseball, football, ice hockey, field hockey, automotive and watercraft racing, soccer events and air shows” but the Respondent has been unable to license use of this mark.


Dated: March 3, 2011

Respectfully submitted,

Dwayne L. Bentley
DL BENTLEY LAW GROUP PLLC
Attorney for Applicant, Kent Anderson
16 Court Street, Suite 2007
Brooklyn, NY 11241
Phone: (718)797-5350
Fax: (718) 852-3309

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing RESPONDENT'S ANSWER TO PETITIONER'S FIRST REQUEST OF ADMISSIONS was served on the Petitioner this 3rd day of March 2011 by sending same via First Class Mail postage prepaid and electronic mail to:


Dwayne L. Bentley

Thomas J. Motzny
KING & BALLOW
315 Union Street, Suite 1100
Nashville, Tennessee 37201